

**ANNUAL REPORT
to the Commissioner
Department of Environmental Protection
July 1, 1990 -- June 30, 1991**

I. Introduction

The Board of Underground Tank Installers was established in 1985 by 32 MRSA Chapter 104-A and its authorities expanded and modified by subsequent amendments in 1987, 1989, and 1990. According to the statute, the purpose of the Board is as follows:

"In order to safeguard the public health, safety and welfare, to protect the public from incompetent and unauthorized persons, to assure the highest degree of professional conduct on the part of underground oil and underground hazardous substance storage tank installers and to assure the availability of underground oil and underground hazardous substance storage tank installations of high quality to persons in need of those services, it is the purpose of this chapter to provide for the regulation of persons offering underground oil and underground hazardous substance storage tank installation services."

Thus, the Board has two major responsibilities: (1) certifying underground tank installers and underground gasoline tank removers, and (2) taking disciplinary actions against installers and removers who violate Department rules and ethical business practices. By law, the Board is also charged with submitting an annual report to the Commissioner of the Department of Environmental Protection (32 MRSA Section 10004(6)). This report is designed to fulfill that mandate for FY 90/91. It covers the following major subject areas:

- Membership and Staffing;
- New Certifications and Testing;
- Recertification and Continuing Education;

- Processing of Complaints;
- Rulemaking and Program Development;
- Other Issues; and
- Financial Statement

II. Membership and Staffing

Members of the Board are as follows:

- Leslie Smith, Chairman (Me. Chamber of Commerce) - Term expires 12/31/91.
- Steven Jacobson (Me. Oil and Solid Fuel Board) - Term expires 12/31/94.
- Rance Knowles (Maine Fire Chief Association) - Term expires 12/31/94.
- James Libby (Public Member) - Term expires 12/31/92.
- Alan Prysunka (DEP) - Term expires 12/31/94.
- Richard Tuttle (Me. Oil Dealer's Assoc.) - Term expires 12/31/91.
- Ted Walker (certified installer) - Term expires 12/31/92.

Rance Knowles is a new member this year. He was appointed January 1, 1991 to replace Palmer Pearson, whose term expired December 31, 1990. Mr. Knowles represents the Maine Fire Chief's Association pursuant to 1990 amendments to the Board's enabling legislation. Steven Jacobson was reappointed a second full term. Alan Prysunka was also reappointed, pursuant to 1990 amendments to the Board's enabling legislation, which removed the two term limit for the representative from DEP. Leslie Smith was re-elected chairman in January 1991.

James Hynson and Theresa Scott continued to provide staffing to the Board. Additional sporadic assistance was provided to the Board by other staff of the Department's Technical Services Division of the Bureau of Oil and Hazardous Materials Control, including Marianne Hubert (AE), James McMillan (CE I), and Fred Lavallee (CE II). Support from the office of the Attorney General was provided by Dennis Harnish.

III. New Certifications and Testing

This section includes discussions on (A) number of installers certified, (B) written exams, (C) on-site exams, (D) upgrades, and (E) apprenticeships.

A. Number of Installers Certified

The number of certified installers remained relatively constant at 239, declining by one from 240 that were certified at the end of FY 89/90 (an error in the FY 89/90 report showed 239 at that time). At present, this includes twenty (20) individuals who hold Class 1 Oil Tank Installer Certificates, 218 who hold Class 2 Oil Tank Installer Certificates, and one (1) who holds a Class 3 Oil Tank Installer. During the year, three (3) new installers became certified while four (4) elected not to apply for recertification once their old certificates expired.

There are no underground gasoline tank removers or underground hazardous substance tank installers certified by the Board. As of the

end of this year, the Board has yet to receive any applications for these two types of certificates.

B. Written Exams

Considerable effort was spent in FY 90/91 in developing new written examinations based on legislative mandates to offer three (3) classes of oil tank installer certificates, a gasoline tank remover certificate, and a hazardous substance tank installer certificate; as well as to require one initial exam for oil tank installers followed by specific final exams for each class. The examinations and study packet previously used for oil tank installers was approved for use as the initial oil tank installer examinations and study packet. Approximately 500 new questions were drafted, subjected to peer review by currently certified installers, and evaluated for relevancy to the other possible exams. As a result, four (4) new study packets and sets of exams were generated: Class 2 oil tank installer final exams and study packet, Class 3 oil tank installer final exams and study packet, hazardous substance tank installer exam and study packet, and gasoline tank remover exam and study packet. The Board currently has a base of approximately 700 multiple choice questions from which to draw exams.

However, severe difficulty was encountered in the attempt to develop a study packet and examinations for the Class 1 (heavy oil) final exam. The Board and staff have been unable to uncover sufficient written information on this subject available to applicants at reasonable cost from which to base an examination in spite of significant efforts by Board staff and DEP engineers. A volunteer committee of currently certified Class 1 installers has been instituted to assist in this effort.

We continue to anticipate considerable effort will be needed to revise our existing materials due to numerous changes in the body of knowledge used to develop the examinations. The enactment of P.L. 1990 c. 865, which significantly altered DEP's mandate for regulating underground oil tanks, created a need for the Department to significantly amend its regulations on underground oil tanks. Once promulgated, these amendments will significantly change the Board's tests. Significant changes also occurred for the nationally accepted and manufacturer's recommended practices, installation instructions, and codes which the Board uses as reference material for its examinations. The nationally accepted recommended practices and codes that were modified include, but are not limited to those published by the Petroleum Equipment Institute (PEI RP/100), the American Petroleum Institute (API RP 1615 and API RP 1632), and the National Fire Protection Association (Codes 30 and 31). The Board elected to wait until DEP regulations are promulgated before beginning this effort in order to accomplish modification of exams in the most efficient manner possible.

We offered three written examinations during FY 90/91: December 19, 1990, January 9, 1990, and June 5, 1991. In all cases, the Board offered the initial oil tank installer examination, the final

examinations for Classes 2 and 3 underground oil tank installer certification, the underground gasoline tank remover examination, and the underground hazardous substance tank installer examination. Results of those examinations are provided in Table 1. A total of 26 applicants took the initial oil tank installer examination, and 19 passed. Three (3) took the Class 2 oil tank installer examination, and two (2) passed. One (1) took and passed the Class 3 final examination.

C. On-Site Exams

Amendments to the Board's enabling legislation and rules eliminated the need to conduct on-site examinations for applicants for oil tank installer certificates. While on-site exams remain required for underground hazardous substance tank installers, and underground gasoline tank removers, no applications for those certificates were received in FY 90/91. Therefore, no on-site exams were conducted.

<u>Examination</u>	<u>12/19/90</u>		<u>1/9/91</u>		<u>6/5/91</u>	
	<u>Pass</u>	<u>Fail</u>	<u>Pass</u>	<u>Fail</u>	<u>Pass</u>	<u>Fail</u>
Initial Oil	5	0	6	2	8	5
Class 1 Final	N/A	N/A	N/A	N/A	N/A	N/A
Class 2 Final	0	0	0	0	2	1
Class 3 Final	0	0	0	0	1	0
Remover	0	0	0	0	0	0
Haz. Sub. Install.	0	0	0	0	0	0

Table 1. Results of written examinations given by the Board of Underground Storage Tank Installers FY 90/91.

D. Upgrades

Amendments to the Board's enabling legislation and rules allowed the Board to upgrade grandfathered Class 2 installers to Class 1 installers if applicants demonstrated sufficient training and experience to the Board. Twenty-six (26) existing Class 2 installers applied for such upgrade, and the Board granted twenty (20) of these requests.

E. Apprenticeships

By virtue of passing the initial oil tank installer examination, nineteen individuals qualified as oil tank installer apprentices this year, in addition to the thirteen (13) which qualified last year. Three (3) of those subsequently completed the number of installations required to make them eligible to take the final exam. Of those, three (3) passed the final exam. All apprentices elected to renew their apprentice certificates, and thus 29 underground oil tank installer apprentices currently exist in Maine.

IV. Recertification and Continuing Education

Of the 240 installers who were certified to install underground tanks at the end of FY 90/91, 42 of them held certificates which expired in FY 90/91. Of those, 38 applied and were granted certificates, while four (4) did not reapply. Three (3) individuals applied but had not met the Board's continuing education requirement, and thus disciplinary action ensued and resulted in the Board granting them the ability to obtain probationary certificates (conditional upon them making up needed continuing education by the end of 1990) upon payment of civil penalties. Four (4) installers applied for reinstatement after failing to submit applications for renewal at the end of FY 89/90, and the Board subsequently allowed them to become recertified upon making up needed continuing education and volunteering civil penalties.

Continuing education opportunities accredited by the Board in FY 90/91 are listed in Table 2. In addition, educational opportunities approved in FY 89/90 continued to be available included eight (8) hours credit to a short course offered periodically at the University of Wisconsin, two (2) hours credit offered whenever requested by six (6) or more installers sponsored by FEDCO Inc. and A.O. Smith Piping Co, and six (6) hours credit to a workshop offered by Petcon, Inc.

V. Processing of Complaints

Disciplinary actions involving 31 investigations and 37 alleged violations were processed and resolved in FY 90/91, including five (5) held over from 1989/90. A summary of the Board's actions in these matters is presented in Appendix A.

<u>Sponsor</u>	<u>Subject</u>	<u>Date Approved</u>	<u>Credit Hours</u>	<u>Number of Sessions</u>
Me. Oil Dealers	OSHA Introduction	9/21/90	3	2
PETCON	Tank Removal	9/21/90	4	3
Adams & Fogg	Tanks & Piping	1/18/913	2
PETCON	OSHA 40 Hour Safety	3/15/91	8	Unspecified
Gould Equip.	Fiberglass Tanks	3/15/91	4	1
Me. Oil Dealers	Explosimeter Use	3/15/91	3	4
Total			26	

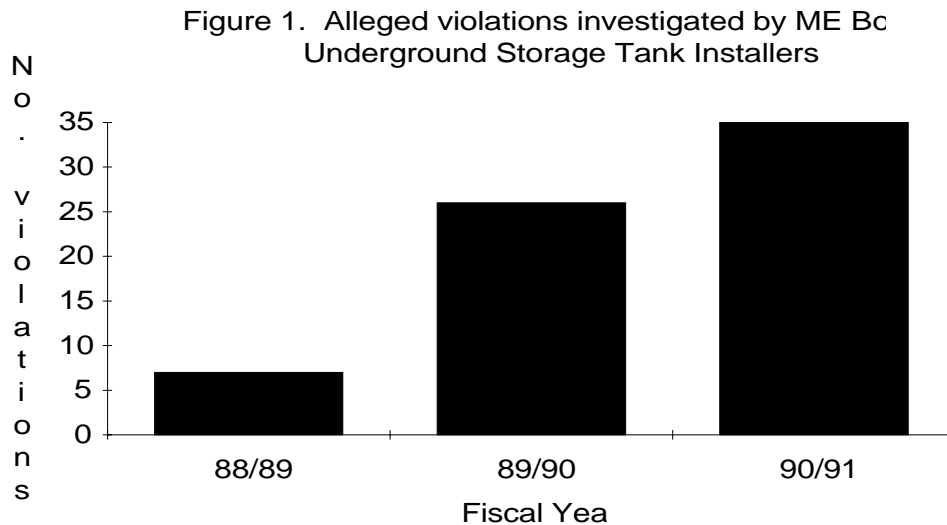
Table 2. Continuing education opportunities accredited by the Board of Underground Storage Tank Installers FY 90/91.

Thirty (30) complaints involving 35 alleged violations were received in FY 90/91. Investigations which remain unresolved at the end of the year are listed in Table 3.

<u>Principle Violation</u>	<u>Year</u>	<u>No.</u>	<u>Date Received</u>	<u>Date Sum.</u>	<u>Action Date</u>	<u>Board Action</u>
06-096CMR691.6.C.5	1991	22	1/4/91	4/26/91	6/7/91	Tabled
06-096CMR691App.E.6	1991	27	2/21/91	5/22/91	6/7/91	Tabled
06-481CMR1.4.A.2.b	1991	29	6/6/91	7/17/91		
32MRSA10006.1	1991	30	6/6/91	7/17/91		

Table 3. Maine Board of Underground Storage Tank Installers ongoing enforcement actions as of June 30, 1991.

Figure 1 shows the number of investigations conducted by the Board and its staff since promulgation of the Board's rules in August, 1988. This graph indicates a significant increasing trend in Board enforcement efforts.



Superior Court of Penobscot County affirmed the Board's May 18, 1990 decision to refuse to renew a certificate of an installer who violated 38 MRSA Sec. 543. The former installer subsequently appealed to the Law Court and the case is now waiting to be heard.

In an effort to improve consistency in its enforcement decisions, the Board requested staff to draft an enforcement policy for discussion and hopefully eventual use by the Board. That project is anticipated to be completed in FY 91/92.

VI. Rulemaking and Program Development

Final rules to implement amendments P.L. 1989, c. 312 and P.L. 1990, c. 845 were adopted by the Board August 17, 1990 and became effective August 27, 1990.

VII. Other Issues

Issues which continued this year are (1) plans for publishing a newsletter, and (2) data management. One of the initial benefits of certification of installers was the development of an ability by the State to communicate with installers via a newsletter. State budgetary constraints and limited staff time have again required staff to prioritize their efforts and resulted in the newsletter again being delayed. We will try again to institute a newsletter in FY 91/92.

Difficulties in obtaining quality, current information has continued to increase, but some steps have been taken to resolve this problem by developing a database have occurred. While software is available and has been adapted to fit the Board's needs, hardware continues to be a problem. DEP personal computers were found to receive extensive use by other DEP staff and thus appear to offer insufficient time to the Board. Further, it is our understanding the needed software has not yet been installed on the DEP mainframe. As a result, we requested and received approval in the FY 91/92 Part 2 budget for a personal computer for the Board's use.

VIII. Financial Statement

The Board's financial statement for FY 90/91 is provided in Table 4. Several points should be considered when examining these data. First, income is estimated, based upon the number of people who applied for certification, took the various tests, became certified, were recertified, or were issued civil penalties. This was necessary because actual income to the Board is lumped with other underground tanks income in the Department's accounting system.

Second, the income shown for recertification varies widely on a biennial basis. Recertification is required every two (2) years, and this income for this year reflects the vast majority of tank installers not becoming recertified this year. It is therefore expected that this figure will follow two (2) year cycles of being high and low.

Respectfully Submitted,

Leslie Smith,
Chairman

Income (Estimated)	
Applications/Written Examinations	\$ 5,200.00
Sales of Study Packets	0
On-Site Examination Fees	0
New Certifications	1,000.00
Recertifications	5,700.00
Late fees/recertification	70.00
Civil Penalties	6,180.00
Subtotal	18,150.00
Expenses: Account 014 06A 1520 44x	
Personal Services	48,399.48
Fringe	16,272.51
Contractual	4,756.57
Travel	255.04
Supplies	1,362.15
Other	12,575.48
Sta-Cap	2,594.16
Subtotal	86,215.39
Grand Total	-68,065.39

Table 4. Financial statement for the Board of Underground Tank Installers, July 1, 1990 through June 30, 1991.